BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ANTHONY HENDERSON)
Claimant	
VS.)
) Docket No. 1,006,520
EARTHGRAINS BAKING COMPANY)
Respondent)
AND)
)
ESIS/ACE USA	
Insurance Carrier)

<u>ORDER</u>

Respondent and its insurance carrier appealed the May 27, 2003 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Claimant requested a preliminary hearing order for medical treatment of his upper extremities. In the May 27, 2003 preliminary hearing Order, Judge Barnes granted claimant's request for that medical treatment and, in addition, authorized Dr. Pedro Murati to provide that treatment.

Respondent and its insurance carrier contend Judge Barnes erred. They argue the Judge exceeded her jurisdiction and authority by authorizing Dr. Murati to provide treatment. That is the only issue on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The issue raised by respondent and its insurance carrier is not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an

ANTHONY HENDERSON

administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Respondent and its insurance carrier's argument that the Judge exceeded her jurisdiction by appointing a specific doctor to treat claimant is without merit. At a preliminary hearing, a judge has the authority to determine whether an employer has failed or neglected to provide an injured worker with medical treatment and, if so, the judge may appoint a doctor to provide such treatment.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

¹ K.S.A. 2002 Supp. 44-551(b)(2)(A).

² Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Dated this	day of July 2003.	
	BOARD MEMBE	ER

c: Steven R. Wilson, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director